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Human rights of migrants

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly a note by the Secretariat pursuant to General Assembly resolution 65/212, in which the Assembly invited the Special Rapporteur on the human rights of migrants to report to it at its sixty-sixth session.

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Activities of the Special Rapporteur on the human rights of migrants

Summary

This note has been prepared by the Secretariat pursuant to General Assembly resolution 65/212, in which the Assembly invited the Special Rapporteur on the human rights of migrants to report to it at its sixty-sixth session. In view of the change of mandate holder, the note provides an overview of the activities carried out by the outgoing Special Rapporteur, Jorge Bustamante, during his term as mandate holder from August 2005 to July 2011. The new mandate holder, François Crépeau, assumed his functions on 1 August 2011 and will present an oral report to the General Assembly at its sixty-sixth session.

I. Introduction

1. This note is submitted pursuant to General Assembly resolution 65/212, in which the Assembly invited the Special Rapporteur on the human rights of migrants to report to it at its sixty-sixth session, and Human Rights Council resolution 8/10. It provides a review of the work of the outgoing Special Rapporteur, Jorge Bustamante, who served as mandate holder from August 2005 to July 2011, and reports on activities undertaken in fulfilment of his mandate during the reporting period (1 August 2010 to 31 July 2011).

2. The activities of the Special Rapporteur are carried out in accordance with Commission on Human Rights resolution 1999/44, by which the mandate was first established. Since then, the mandate of the Special Rapporteur has been extended by Commission on Human Rights resolutions 2002/62 and 2005/47 and Human Rights Council resolutions 8/10 and 17/12, each time for a period of three years.

3. The international legal framework for the work and methods of work of the outgoing Special Rapporteur are described in his first report to the Commission on Human Rights (E/CN.4/2006/73 and Add.1 and 2). In the pursuit of his mandate, the Special Rapporteur has been guided by international human rights law, primarily the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and other international instruments, including those of the International Labour Organization. Dialogue, consultation and partnerships have constituted essential features of his work.

4. In June 2011, the Human Rights Council decided, by resolution 17/12, to extend the mandate for a period of three years. At its seventeenth session, the Human Rights Council appointed François Crépeau (Canada) as the new Special Rapporteur. François Crépeau assumed his functions as the new Special Rapporteur on the human rights of migrants on 1 August 2011. He is the third mandate holder, after Jorge Bustamante (Mexico) (2005-2011) and Gabriela Rodríguez Pizarro (Costa Rica) (1999-2005).[1]

II. Activities

A. Country visits

5. During his term as mandate holder, the Special Rapporteur visited the following countries: South Africa (24 January-1 February 2011); Japan (23-31 March 2010); Senegal (17-21 August 2009); United Kingdom of Great Britain and Northern Ireland (21-26 June 2009); Romania (15-20 June 2009); Guatemala (24-28 March 2008); Mexico (9-15 March 2008); United States of America (30 April-18 May 2007); Indonesia (12-21 December 2006); and Republic of Korea (5-12 December 2006). Invitations for country visits by the Special Rapporteur have been received from the Governments of Albania, Australia, Belarus and Greece. Requests for country visits which are still awaiting response concern Bahrain, Canada, India, the Libyan Arab Jamahiriya, Malaysia, Mauritania, the Philippines, Spain and Thailand.

[1] For an overview of the mandate and activities of the Special Rapporteur on the human rights of migrants, see www2.ohchr.org/english/issues/migration/rapporteur/index.htm.

6. During the reporting period, the Special Rapporteur undertook a country mission to South Africa from 24 January to 1 February 2011 at the invitation of the Government. While recognizing efforts made by the Government to protect migrants, the Special Rapporteur noted, in his report on the visit (A/HRC/17/33/Add.4), that a number of challenges still need to be addressed. In particular, he noted the absence of a clear and comprehensive immigration policy, the lack of data and statistics, the question of detention of foreign nationals, access to health-care services and the situation of unaccompanied foreign children, and made a number of recommendations in this context.

B. Reports

7. The Special Rapporteur submitted six thematic reports to the Commission on Human Rights and its successor, the Human Rights Council,[2] and four reports (prior to the present document) to the General Assembly.[3] In his reports to the Human Rights Council, the Special Rapporteur examined the following themes: impact of certain laws and administrative measures against migrants (A/HRC/4/24); criminalization of irregular migration (A/HRC/7/12); the protection of children in the context of migration (A/HRC/11/7); and major challenges in the realization of migrants' right to health and adequate housing (A/HRC/14/30).

8. In his final report to the Human Rights Council (A/HRC/17/33), presented at its seventeenth session in June 2011, the Special Rapporteur recapitulated the concerns and findings in relation to those themes. In conclusion, the Special Rapporteur expressed concern at the increasing intolerance and vulnerability of migrants to potential racist or xenophobic violence, trafficking and smuggling and the fact that migrants with irregular status often fear to seek protection from authorities and are hence left without access to basic social rights. He emphasized, however, that migration can be an essential component of development and prosperity in all countries of origin, transit and destination around the globe (ibid., para. 78).

9. The reports submitted by the Special Rapporteur to the General Assembly have examined in further depth some of these themes, notably the protection of children (A/64/213) and criminalization of migration (A/65/222), and have covered other areas deemed to be of particular interest to the Assembly, such as the High-level Dialogue on International Migration and Development (A/61/324).

C. Communications

10. From August 2005 to July 2011, the Special Rapporteur sent 162 communications to Governments on alleged or imminent violations of the human rights of migrants. Of these, 108 were letters of allegation and 54 were urgent appeals. The Special Rapporteur received 102 replies (63 per cent) from Governments to those communications. The majority of communications (112) were

[2] E/CN.4/2006/73 and Add.1 and 2; A/HRC/4/24 and Add.1-3; A/HRC/7/12 and Add.1 and 2; A/HRC/11/7 and Add.1 and Add.1/Corr.1 and Add.2 and 3; A/HRC/14/30 and Add.1-3; and A/HRC/17/33 and Add.1-4.

[3] A/60/357, A/61/324, A/64/213 and Corr.1 and A/65/222.

issued jointly with other special procedures mandate holders. Specifically, joint letters of allegation (66) were most frequently sent together with the Special Rapporteur on trafficking in persons, especially women and children; the Special Rapporteur on violence against women, its causes and consequences; and the Special Rapporteur on the sale of children, child prostitution and child pornography. With respect to urgent appeals (46), joint communications were more frequently issued with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention, and the Special Rapporteur on the independence of judges and lawyers.

11. In the reporting period, the Special Rapporteur sent a total of 22 communications alleging violations of the rights of migrants. To these, 15 responses from the Governments concerned were received. The addendum to his last report to the Human Rights Council (A/HRC/17/33/Add.1) includes a summary of communications sent to Governments from 1 April 2010 to 15 March 2011, as well as replies received from 11 May 2010 to 10 May 2011. The communications sent and received since then will be presented to the Human Rights Council at future sessions.

12. In his communications to Governments sent from April 2010 to May 2011, the Special Rapporteur expressed concern at a number of situations of alleged violations of the human rights of migrant workers, including (a) arbitrary arrest, sexual violence, torture and other forms of cruel, degrading and inhuman treatment or punishment; excessive use of force; and forced labour; (b) mass expulsions and forcible return; (c) inadequate standard of living, including lack of access to adequate food and housing; (d) sale of children, including for purposes of economic exploitation; (e) killings by border authorities; (f) trafficking for sexual and economic exploitation; (g) verbal and physical abuse by immigration authorities; (h) abuse and exploitation of domestic migrant workers, including denial of basic labour rights, such as non-payment of wages; (i) restrictions on freedom of movement of nationals; and (j) racist and xenophobic propaganda against migrants.

D. Other activities

13. During his mandate, the Special Rapporteur participated in a number of activities and events relating to the protection and promotion of the rights of migrants. These included consultation with and participation in the activities of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Office of the United Nations High Commissioner for Human Rights and its Task Force on Migration, the International Organization for Migration and the World Health Organization.

14. The Special Rapporteur contributed to and presented reports on issues relating to the mandate in the context of major conferences, including the annual meetings of the Global Forum on Migration and Development, the World Social Forum on Migration, a regional conference as part of preparations for the Durban Review Conference and the fifth International Congress on Migration and Development. Further, the Special Rapporteur engaged in dialogue with regional organizations and forums and participated in training and other activities organized by academic institutions and civil society organizations.

15. During the reporting period, the Special Rapporteur participated in the Festival Viva América, organized by Casa América, in Madrid (October 2010) and the International Conference on Protecting and Supporting Children on the Move, organized by the Global Movement for Children, with the support of Save the Children and other organizations, in Barcelona, Spain (5-7 October 2010), together with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences. On 8 and 9 November 2010, the Special Rapporteur also participated in the Fourth Global Forum on Migration and Development, hosted by the Government of Mexico in Puerto Vallarta, on the topic of partnerships for migration and human development.

16. In the fulfilment of his mandate, the Special Rapporteur also issued, separately or jointly with special procedures and other United Nations human rights mechanisms, several statements to bring critical issues relating to the human rights of migrants to the attention of the international community. These included joint statements on International Migrants Day (18 December) with the Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, calling for wider ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

III. Main thematic issues examined by the Special Rapporteur

17. The Special Rapporteur focused on three main thematic issues during his term as mandate holder, namely, criminalization of irregular migration, protection of children in the context of migration, and the rights of migrants to health and adequate housing. They are briefly summarized below. As a general rule, the Special Rapporteur held that the guiding principle of migration governance must be the fulfilment and protection for all migrants, regardless of their immigration status, of their internationally recognized human rights at all stages of the migratory processes — in countries or territories of origin, transit and destination (A/65/222, para. 67).

18. The Special Rapporteur observed with deep concern the increasing trend towards criminalization of irregular migration and the increasing abuse of irregular migrants throughout the migration process.[4] Two measures taken by States illustrated this general trend: the externalization of migration control policies and the criminalization of labour migration. In efforts to curb irregular migration and simultaneously address national security issues, the externalization of border controls to countries of origin and transit through bilateral agreements to restrict migratory flows has contributed to a tendency to treat violations of migration procedures as criminal rather than administrative offences. States have also resorted to criminalization by making irregular stay in the country a criminal offence. He noted that these measures have weakened the human rights protection of migrants, as seen in the administrative detention of migrants intercepted at sea and/or by land, outbreaks of xenophobic abuse and violence in countries of destination and the expansion of smuggling and trafficking. While acknowledging the sovereign right of States to safeguard borders and manage migration, the Special Rapporteur observed that these policies fail to adequately acknowledge the demand-driven nature of

[4] See A/65/222, A/HRC/7/12 and A/HRC/17/33.

migration and the labour needs of host countries and their detrimental consequences for migrant populations as a whole and host societies at large. To assist States in implementing human rights-based migration policies, the Special Rapporteur offered practical recommendations for reforming regional and bilateral cooperation mechanisms and agreements and provided good examples and alternatives to the criminalization of irregular migration.

19. Recalling the obligation of States to protect the rights of the child at all stages of the migration process, the Special Rapporteur considered the specific protection needs and vulnerability of children in the migration process.[5] He identified three categories of children affected by migration: children "left behind", children "on the move", and migrant children in host countries. While noting that the impact of migration on children left behind by adult migrants responsible for them is difficult to measure, the Special Rapporteur stressed the necessity of promoting family unity and reunion with family members in host countries. Children moving across borders migrate with family members or independently, often for education or employment opportunities, but also forcibly, when falling victim to organized crime networks. These children, in particular when unaccompanied or undocumented, need specific protection against sexual violence, deportation and repatriation, unlawful and arbitrary deprivation of liberty. With respect to children in host countries, the Special Rapporteur indicated two areas where enhanced efforts by States are needed: protection from transnational organized crime and ensuring the full enjoyment of human rights by children of a migrant background. Major challenges in the protection of children during migration include the lack of child-specific provisions, and the lack of distinction between adult and child migrants, in national migration laws and policies and the particular vulnerabilities of the girl child and children in irregular migration. To assist States in addressing these and other pertinent issues, the Special Rapporteur presented a number of recommendations for further consideration and action.

20. The Special Rapporteur's third focus concerned the realization of the rights to health and adequate housing in the light of the growing trend in many host countries to adopt immigration policies and measures which significantly hamper the enjoyment of those rights.[6] He expressed concern at the general lack of comprehensive policies and measures aimed at protecting the rights of migrants to health and adequate housing and noted that the absence of necessary support, such as language training and information about laws and regulations, further obstructed the enjoyment of these rights. In relation to the right to health, the Special Rapporteur was concerned at the vulnerability of migrants to poor health due to their low socio-economic status. He observed that their entitlements and access to health care varied enormously. At one end of the spectrum, non-nationals were not able to access life-saving medication because facilities denied treatment on the basis of "being foreign" or not having a national identity document. The Special Rapporteur identified women domestic migrant workers as one of the most vulnerable groups of migrant workers and reported a widespread pattern of physical, sexual and psychological abuse among these women. Concerning the right to adequate housing, the Special Rapporteur noted "a disturbingly large gap" between international human rights standards and the situation prevailing in many parts of

[5] See A/HRC/11/17 and A/HRC/17/33.

[6] See A/HRC/14/30 and A/HRC/17/33.

the world, in particular with respect to migrant women and children. Notably, discrimination often inhibited migrants' access to the private housing market. The situation was particularly difficult for irregular migrants, especially in countries where irregular stay is a criminal offence. In his recommendations, the Special Rapporteur underlined that, as a matter of fundamental principle, States should fulfil the "minimum core obligation" to ensure the satisfaction of minimum essential levels of primary health care as well as basic shelter and housing for all individuals within their jurisdiction.

21. In his final report to the Human Rights Council (A/HRC/17/33), the Special Rapporteur presented two themes considered important for future research: migration in the context of climate change and the political participation and civil rights of migrants. He noted that further discussion on these themes would allow the mandate to present innovative approaches; they also underlined the need for a human rights perspective in global discussions among stakeholders on migration.

IV. Conclusion

22. **In recapitulating the concerns and findings gathered in the exercise of his mandate, the Special Rapporteur reiterated concern at the increasing intolerance towards migrants and their vulnerability to potential racist or xenophobic violence, trafficking and smuggling and the fact that migrants with irregular status often fear to seek protection from authorities and are hence left without access to basic social rights. He stressed that migration can be an essential component of development and prosperity in all countries of origin, transit and destination around the globe. The Special Rapporteur thanked the Human Rights Council for the privilege and opportunity of serving the mandate.**

23. **The new Special Rapporteur, François Crépeau, will present an oral report to the General Assembly at its sixty-sixth session and will submit his first report to the Human Rights Council at its twentieth session in June 2012.**